



27 JUN 2002

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In re Application of  
WILLNER, Stig, et al.  
Application No.: 10/009,860  
PCT No.: PCT/SE00/00727  
Int. Filing Date: 17 April 2000  
Priority Date: 30 April 1999  
Attorney's Docket No.: CU-2691 RJS  
For: ADJUSTABLE SPINAL BRACE

DECISION ON

REQUEST

UNDER 37 CFR 1.42

This is a decision on applicants' "Response to Decision," filed 28 May 2002.

### **BACKGROUND**

On 17 April 2000, applicants filed international application PCT/SE00/00727, which claimed a priority date of 30 April 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 09 November 2000. On 17 November 2000, a demand for international preliminary examination was filed within nineteen months from the priority date. As such, the deadline for entry into the national stage in the United States was 30 October 2001.

On 26 October 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 08 January 2002, applicants filed a declaration accompanied by the fee for filing the declaration later than thirty months from the priority date.

On 23 February 2002, USPTO mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a)-(b) was required.

On 02 April 2002, the Office mailed Decision On Papers Under 37 CFR 1.42 dismissing applicants' request for status under 37 CFR 1.42.

On 28 May 2002, applicants submitted "Response to Decision" accompanied by a supplemental declaration.

### **DISCUSSION**

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the


deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. However, the declaration must include the signature of the legal representative or the signature of all of the heirs (or if there is only one heir, the sole heir), if under applicable law, the heirs' authority corresponds to that of a legal representative. See MPEP 409.01(d).

The 28 May 2002 declaration identifies Ms. Eva Willner as "sole heiress of Stig Willner" and lists the citizenship, residence and postal address for both Ms. Willner and inventor Willner. This submission is construed as an indication that a legal representative has not been appointed nor is one required to be appointed by applicable law, and thus, the heir is signing as the legal representative of the estate. See MPEP 409.01(d). If this interpretation is incorrect, applicants are required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to the decision.


### CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is GRANTED.

The application has an international filing date of 17 April 2000 under 35 U.S.C. §363 and a date of 28 May 2002 under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.



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